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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,745	10/19/2001	Sandra Solmon	5239-94 US	7395

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,745

Applicant(s)

SOLMON, SANDRA

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Supermarket News(7/19/99,p.36, Ref.V) .

In regard to claim 1, Super Market New (V⁴) discloses providing at least one disposable ramekin (e.g. aluminum) having a desired shape, the ramekin being made of a material which withstands freezing without cracking or distorting, preparing a dessert mixture (e.g. a soufflé), depositing a portion of the dessert mixture into the ramekin, freezing the dessert mixture, packaging the combination and delivering the combination to a location.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Supermarket News (V⁴) in view of New Orleans Times Picayune November 7, 1996, page F1-Reference U⁴), Japan scan food Industry Bulletin, 16(9), November 1998, page

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6-Reference W), International New Product Report (20, October 19, 1990, page 19-Reference U), Peixoto et al (PCT WO 01/19683).

Claim 2 recites removing the frozen dessert mixture from the disposable ramekin and placing the frozen dessert mixture into a serving ramekin shaped to receive the frozen dessert. The art taken as a whole teaches marketing desserts in disposable or reusable serving/manekin receptacles so that the dessert can be served in the original receptacle and transferring the desserts from its original package to a serving receptacle. For example, Supermarket News discloses aluminum receptacles, Japan scan discloses cups that look like decorative pottery, International New Product Report (U) disclose reusable terracotta dishes, Prepared Foods discloses "ramekin-style" cups, Peixoto et al disclose plastic and/or aluminum containers and New Orleans Times Picayune discloses transferring the product from the unsealed aluminum cup to serving plate which would be "shaped to receive the frozen desert" which is all claim 2 recites. Claim 3, recites that the two ramekins have substantially the same contour. To provide the two ramekins with substantially the same contour is seen to have been an obvious matter of design for one of ordinary skill in the art in view of the art taken as a whole teaching disposable and reusable ramekins and transferring products from a package to a serving article and in view of the fact that the only apparent purpose of the serving ramekin having the same shape as the packaging ramekin is to give the appearance or impression that the product had been freshly prepared in the serving ramekin. In regard to claim 4, the art taken as a whole discloses metal cupcake like ramekins on a tray. The examiner also takes notice of the fact that disposable cup cake holder/baking trays

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are, of course, well known in the art. To substitute one conventional packaging/molding article for another conventional packaging/molding article for its art recognized and applicant's intended function would therefore have been obvious. In regard to claims 5 and 6, Supermarket News discloses cooking/baking before freezing. In regard to claims 7 and 8, as noted above, the art taken as a whole discloses the use of plastic for the package/mold intended to be overheated. For example, Peixoto et al discloses polyester. To modify the combination and substitute one conventional packaging material for another conventional packaging material for its art recognized and applicant's intended function is seen to have been obvious. The examiner takes notice of the fact that crystallized polyethylene terephthalate (referred to in the art as CPET) is well known for its freeze and heat resistance and has been conventionally used in ovenable receptacles. The remainder of the claims (7-16) are rejected for the reasons given above.

The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.


Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/dh
February 9, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/10/04
Remsen 8A69